

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW RAMON SCOTT,

Defendant-Appellant.

UNPUBLISHED

April 24, 2014

No. 311955

Kent Circuit Court

LC No. 11-009938-FC

Before: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J. (*concurring in part and dissenting in part*)

I concur with the majority opinion in that this case should be affirmed. However, I write separately to comment on the egregiousness of two of the prosecutor's comments during trial and to dissent from the majority that these comments were in reference to the evidence and, therefore, presented a proper argument.

Specifically, the first offending comment was made by the prosecutor in opening statement: "We do not come to you and would not come to you unless the evidence would prove beyond a reasonable doubt, that 'Mon with his buddy, Louie Howard, killed Tahari Braggs without any lawful justification.'" While it is true that the prosecutor mentioned the evidence, her statements venture far beyond the evidence. She has clearly put the "power" of her office behind the prosecution of defendant. *People v Whalen*, 390 Mich 672, 687; 213 NW2d 116 (1973).

For example, if the prosecutor had stated, "The evidence will prove beyond a reasonable doubt that defendant, with his buddy, killed Tahari Briggs without any lawful justification," I would have no problem with that being an appropriate and lawful part of an opening statement. However, to say "We do not come to you and would not come to you unless the evidence [showed]" this to be true, is beyond egregious. It is simply not enough to say "based on the evidence," and all manner of sins are forgiven. "The presumption of innocence protects the defendant in a criminal case with equal force whether the witnesses against him are police officers or ordinary citizens. The prosecutor may not subtly convert the presumption of innocence into a presumption of guilt by appealing to the jurors to perform a civic duty to support the police" *People v Farrar*, 36 Mich App 294, 298; 193 NW2d 363 (1971) and by reasonable extension to support the prosecutor. In my opinion, the prosecutor requested just that of the jury with her opening statement.

The second offending comment was made during the prosecutor's closing argument when she stated, "If this detective believed this is self-defense, we would not be sitting here right now." The prosecutor indicates that this was in response to an argument made by defense counsel. I disagree.

The statement by defense counsel during his closing argument was quoting from the defendant's interrogation by a detective, and he argued as follows:

"First thing, I don't believe you guys were looking for him that day. You guys stumbled across each other. By the sounds of what Louie is saying, he kind of pulled across in front of you. You know what I mean? So you guys were already on edge."

"That is not---that it [sic] not the statements my client made. Those are the statements of Detective Cammenga when he's investigating the murder. That's what Detective Cammenga tells Ramon he thinks happened. That's what the detective thinks what the evidence shows him, and that he wants to talk to Ramon about it."

The prosecutor responded as follows:

"He also says that Cammenga, when he's talking to the defendant on the post-arrest interview, is talking about self defense. And then he wants to argue—really?—that the detective is saying he believes it's self defense? That's what the detective believes? If this detective believed this is self defense, we would not be sitting here right now. They bring us the warrant request. They asked us to write a warrant. If this was self defense, this man would have never sought a warrant. He says those things, like Detective Hite said, because they want to at least meet at the scene, talk to us. Give him an opportunity to explain his side of the self defense. It has nothing to do with what he believes happened. He's trying to find out what happened."

The prosecutor is clearly saying that the detective does not believe it was self-defense and what the detective believes about whether defendant is guilty has no relevance in argument or evidence. That is a question for the jury and the jury alone. *Id.*

As the majority indicates, and I agree, the jury instructions that attorneys' statements are not evidence would have alleviated any prejudice from the prosecutor's comments, regardless of them being so egregious. Also, the evidence of defendant's guilt was overwhelming and therefore, the prosecutor's errors were harmless. Therefore, I concur with the majority regarding the result and the remaining part of the opinion, but I dissent regarding the two comments by the prosecutor as stated above.

/s/ Amy Ronayne Krause